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असाधारण

EXTRAORDINARY

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PART II—Section 2

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced in Lok Sabha on the 25th November, 1974:—

BILL NO. 103 OF 1974

A Bill to provide for the establishment of a Commission for the selection of personnel for appointment to services and posts in certain banking institutions and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Twenty-fifth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Banking Service Commission Act, 1974.

Short title and comment.

(2) It shall come into force on such date as the Central Government may, by notification, appoint.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) "banking company" has the meaning assigned to it in the Banking Regulation Act, 1949;

(b) "Chairman" means the Chairman of the Commission;

(c) "Commission" means the Banking Service Commission, established under sub-section (1) of section 3;

10 of 1949.

(d) "junior officers' cadre", in relation to a public sector bank, means such cadre of junior officers as the Central Government may, by notification, specify in relation to that bank;

(e) "member" means a member of the Commission, but does not include the Chairman;

(f) "notification" means a notification published in the Official Gazette;

(g) "prescribed" means prescribed by rules made under this Act;

(h) "public sector bank" means—

(i) a corresponding new bank specified in the First Schedule to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970;

5 of 1970.

(ii) the State Bank of India constituted under the State Bank of India Act, 1955;

23 of 1955.

(iii) a subsidiary bank constituted under the State Bank of India (Subsidiary Banks) Act, 1959;

38 of 1959.

(i) "Reserve Bank" means the Reserve Bank of India, constituted under the Reserve Bank of India Act, 1934;

2 of 1934.

(j) "Secretary" means the Secretary of the Commission.

CHAPTER II

BANKING SERVICE COMMISSION

Establishment of the Commission.

3. (1) With effect from such date as the Central Government may, by notification specify in this behalf, there shall be established a Commission, to be called the Banking Service Commission.

(2) The Commission shall be a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property and to contract, and may by the said name sue and be sued.

(3) Unless otherwise provided by the Central Government by notification, the Central Office of the Commission shall be at New Delhi.

(4) The Commission shall have regional offices in such State or group of States as the Commission may, with the previous approval of the Central Government, determine and no such regional office shall be abolished without the previous approval of the Central Government.

Appointment and terms of office of Chairman and members.

4. (1) The Central Government shall, by notification, appoint a person to be the Chairman of the Commission and not more than eight other persons to be members of the Commission.

(2) The Chairman and members shall be persons who, in the opinion of the Central Government, are men of ability, integrity and standing and have special knowledge of, or practical experience in, financial, economic or business administration or in the administration of Government or any other matter which would render such person suitable for appointment as Chairman or member:

Provided that as nearly as may be one-half of the members shall be persons who, on the date of their respective appointments, have had experience of not less than ten years in a banking company or in any

public sector bank or Reserve Bank or in an institution wholly or substantially owned by the Reserve Bank or a public financial institution.

Explanation I.—For the purposes of this section, each of the following institutions shall be deemed to be a public financial institution, namely:—

- 1 of 1956. (i) the Industrial Credit and Investment Corporation of India Limited, a company formed and registered under the Companies Act, 1956;
- 15 of 1948. (ii) the Industrial Finance Corporation of India, established under section 3 of the Industrial Finance Corporation Act, 1948;
- 18 of 1964. (iii) the Industrial Development Bank of India, established under section 3 of the Industrial Development Bank of India Act, 1964;
- 31 of 1956. (iv) the Life Insurance Corporation of India, established under section 3 of the Life Insurance Corporation Act, 1956;
- 52 of 1963. (v) the Unit Trust of India, established under section 3 of the Unit Trust of India Act, 1963;
- (vi) any other financial institution which is declared by the Central Government, by notification, to be a public financial institution.

Explanation II.—For the purposes of this section and of section 5, an institution shall be deemed to be substantially owned by the Reserve Bank if, in the capital of such institution, that Bank has not less than forty per cent. share.

(3) The Chairman or any member shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier:

Provided that—

- (a) the Chairman or any member may, by writing under his hand addressed to the Central Government, resign his office;
- (b) the Chairman or any member may be removed from his office in the manner provided by this Act.

(4) The other terms and conditions of service of the Chairman and members shall be such as may be prescribed.

(5) If the office of the Chairman becomes vacant or if the Chairman is unable to discharge his functions owing to absence, illness or any other cause, such member of the Commission as the Central Government may, by order, specify, shall discharge the functions of the Chairman up to the date on which a new Chairman is appointed or, as the case may be, the Chairman resumes his duties.

5. A person who holds office as Chairman or member shall, on his ceasing to hold such office by reason of the expiration of his term or otherwise, be ineligible for re-appointment in the Commission or for employment under the Government of India or of any State or in the Reserve Bank or in any institution wholly or substantially owned by the Reserve Bank or in any public sector Bank or any banking company or in a public financial institution:

Prohibition as to holding offices by Chairman or member on ceasing to be such Chairman or member.

Provided that a member to whom this section applies, shall be eligible for appointment as Chairman, but shall not be eligible for any other employment.

Removal
and sus-
pension
of Chair-
man or
the mem-
bers from
office in
certain
circum-
stances

6. (1) The Central Government may remove from office the Chairman or any member, who—

- (a) is adjudged an insolvent, or
- (b) is convicted of an offence involving moral turpitude, or
- (c) is, in the opinion of the Central Government, unfit to continue in office by reason of infirmity of mind or body, or
- (d) engages during the term of office in any paid employment outside the duties of his office, or
- (e) has acquired such financial or other interest as is likely to affect prejudicially his functioning as member, or
- (f) has so abused his position as to render his continuance in office undesirable.

(2) Notwithstanding anything contained in sub-section (1), the Chairman or any member shall not be removed from office on the ground specified in clause (d) or clause (e) or clause (f) of that sub-section unless the matter has been referred to an Inquiry Officer appointed under sub-section (3) and such officer has, after an inquiry, held in accordance with such procedure as the Central Government may specify in this behalf, reported that the member ought, on such grounds, to be removed.

(3) For the purpose of holding an inquiry under sub-section (2), the Central Government may, by order, appoint, as an Inquiry Officer, a person who is holding or has held the office of a Judge of the Supreme Court or of any High Court.

(4) The Central Government may suspend from office the Chairman or any member in respect of whom a reference has been made to an Inquiry Officer under sub-section (2), pending such inquiry.

(5) The terms and conditions of service of any Inquiry Officer appointed under sub-section (3) shall be such as the Central Government may, by order, specify.

Power of
Commis-
sion to
constitute
commit-
tees.

7. (1) The Commission may, in such manner and subject to such conditions and restrictions as may be prescribed, constitute one or more committees consisting wholly of its members or partly of its members and partly of other persons and delegate to any committee so constituted such of the functions and powers of the Commission as may be specified in the rules made by the Central Government:

Provided that the Commission may constitute any committee either with, or without, the Chairman as one of the members of such committee.

(2) The sitting fee and travelling allowance payable to persons, other than the Chairman and members, for attending any meeting of the committee, shall be such as may be prescribed.

Secretary
and other
staff of
the Com-
mission.

8. (1) The Commission may, with the previous sanction of the Central Government, appoint a Secretary for the efficient discharge of its functions under this Act.

(2) The terms and conditions of service of the Secretary shall be such as may be prescribed.

(3) Subject to such regulations as may be made in this behalf, the Commission may appoint such other employees as it may think necessary for the efficient discharge of its functions under this Act on such terms and conditions as the Commission may, having regard to the terms and conditions of service of the comparable posts in the Central Government, determine with the previous sanction of the Central Government.

9. (1) All orders and instruments issued by the Commission shall be authenticated by the signature of the Secretary or any other officer of the Commission authorised by the Chairman in this behalf.

Authenti-
cation
of orders
and
other
instru-
ments of
the Com-
mission.

(2) Orders or instruments issued by the Commission and authenticated in accordance with the provisions of sub-section (1) shall be evidence of the matters recorded therein and shall be admissible in evidence notwithstanding anything contained in the Indian Evidence Act, 1872, or in any other law for the time being in force.

1 of 1872.

CHAPTER III

FUNCTIONS OF THE COMMISSION

10. (1) It shall be the duty of the Commission to conduct examinations for appointments in each public sector bank to posts in—

Competi-
tive
exami-
nations
for ap-
pointment
in public
sector
banks.

(a) the clerical and allied cadres,

(b) the junior officers' cadre, and

(c) such other cadres of officers as the Central Government may, by notification, specify.

(2) If any question arises as to whether any post or class of posts falls in any clerical and allied cadre or junior officers' cadre, such question shall be referred to the Central Government and that Government shall decide the same.

11. The Commission shall call for applications from such category of persons and in such manner as may be specified by it in the regulations and conduct examinations in such State or group of States as may be necessary having regard to the requirements of section 17 and the vacancies communicated to it under section 12.

Calling
for
applica-
tions
and
conduct
of exami-
nations.

12. (1) It shall be the duty of every public sector bank to communicate to the Commission the number of vacancies which are likely to occur in clerical and allied cadres and in junior officers' cadre, during the unexpired portion of the calendar year in which this Act comes into force and thereafter, as soon as may be, after the commencement of each calendar year, the number of vacancies which are likely to occur in the said cadres during that calendar year:

Duty of
public
sector
banks
to com-
municate
to the
Commis-
sion the
number
of
vacancies.

Provided that the number of vacancies in the cadre of junior officers, to be filled through the Commission during each calendar year, shall not be less than twenty-five per cent. of the estimated total number of vacancies in that cadre:

Provided further that the Central Government may, if it is of opinion that it is necessary so to do in the interest of the public sector banks, by notification, raise the said percentage to thirty-three and one-third per cent.

(2) Communication of vacancies referred to in sub-section (1) shall be made in such form and in such manner as may be specified in the regulations made by the Commission and every such communication, in relation to the vacancies in the clerical and allied cadre, shall also indicate the number of vacancies which exist or are likely to occur in a State or group of States.

Cases in which Commission shall not be consulted.

13. It shall not be necessary to consult the Commission in regard to the selection of a person—

(a) for appointment to a post in the clerical or allied cadre, on compassionate grounds (in pursuance of the scheme framed by a public sector bank in consultation with the Commission and with the previous sanction of the Central Government), of a dependant of an employee who had died while in the service of the public sector bank;

(b) if the person appointed is not likely to hold the post for a period of more than one year, and it is necessary in the interests of the public sector bank to make the appointment immediately and reference to the Commission will cause undue delay:

Provided that—

(i) such appointment is made in the manner specified by the Commission by regulations and is reported to the Commission as soon as it is made;

(ii) if the appointment continues beyond a period of six months, a fresh estimate as to the period for which the person appointed is likely to hold the post shall be made and reported to the Commission; and

(iii) if such estimate indicates that the person appointed is likely to hold the post for a period of more than one year from the date of appointment, the Commission shall immediately be consulted in regard to the filling of the post.

Duty of Commission to make recommendation.

14. It shall be the duty of the Commission to make, on the basis of the results of examinations conducted by it in accordance with the provisions of sub-section (1) of section 10, recommendations to each public sector bank for appointments to fill the vacancies communicated to it by such bank under section 12.

Communicated vacancies to be filled only on the recommendation of the Commission.

15. (1) Notwithstanding anything to the contrary contained in any award, settlement or agreement, or in any judgment, decree or order of any court or tribunal or other authority or in any other law in force for the time being, appointment to all the vacancies communicated to the Commission under section 12 shall, on or from such date as the Commission may notify in respect of each public sector bank, be made by such public sector bank only on the recommendation of the Commission, except where consultation with the Commission is not necessary under this Act.

(2) If, in any calendar year, the Commission is unable to make recommendation for appointment to all the vacancies communicated to it by a

public sector bank under section 12, or if the public sector bank is unable, in any calendar year, to make appointments on the basis of recommendations made by the Commission, the vacancies may be carried forward to the subsequent calendar year, to be filled in the said manner:

Provided that the public sector bank may, in consultation with the Commission, fill such vacancies temporarily in such manner and for such period as the Commission may by regulations specify.

16. The Commission shall discharge such other functions of an advisory nature as the Central Government may, by notification, entrust to it.

Power of Central Government to entrust other advisory functions to the Commission.

17. The Central Government may, by order, direct that in relation to every public sector bank, reservations in favour of the Scheduled Castes, Scheduled Tribes and other categories of persons shall be made in such manner and to such extent as it may specify:

Reservation of posts for candidates belonging to Scheduled Castes and Scheduled Tribes and other categories of persons.

Provided that in giving any direction as aforesaid, the Central Government shall have due regard to the reservation of posts made for the Scheduled Castes, Scheduled Tribes and other categories of persons in relation to recruitments to the services of the Government and to the general need, and special requirements, of such public sector bank.

Explanation.—The expressions “Scheduled Castes” and “Scheduled Tribes” shall have the meanings respectively assigned to them in article 366 of the Constitution.

18. (1) The Commission shall have its own Fund and all the receipts of the Commission shall be credited to the Fund and all payments by the Commission shall be made therefrom.

Fund of the Commission.

(2) All moneys belonging to the Fund shall be deposited in such banks or invested in such manner as the Commission may, subject to any general or special order made by the Central Government in this behalf, decide.

(3) The Commission may spend such sums as it thinks fit for performing its functions under this Act and such sums shall be treated as expenditure payable out of the Fund of the Commission.

19. (1) The Central Government may, by general or special order and subject to any rules that may be made in this behalf, direct every public sector bank to pay to the Commission such fee as it may determine and the aggregate amount of the fee so determined shall not exceed the expenses incurred by the Commission.

Payment to the Commission.

(2) The aggregate amount of fees payable under sub-section (1) shall be apportioned by the Central Government between different public

sector banks and in making such apportionment in relation to a public sector bank, the Central Government shall have due regard to the demand and time liabilities of that public sector bank.

(3) For the purpose of meeting the initial expenditure of the Commission, the Central Government may, by general or special order, direct the payment by every public sector bank of an advance of such amount as it may specify and the advance so made shall be appropriated or adjusted in such manner as may be prescribed.

Explanation.—The expression “demand liabilities” and “time liabilities” shall have the meanings respectively assigned to them in the Banking Regulation Act, 1949.

10 of 1949.

Budget
of the
Com-
mission.

20. The Commission shall prepare, in such form and at such time each year as may be prescribed, a budget in respect of the financial year next ensuing showing the estimated receipts and expenditure, and submit the same to the Central Government for approval.

Ac-
counts
and
audit.

21. (1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form and in such manner as may be prescribed.

(2) The accounts of the Commission shall be audited by a person who is qualified to act as an auditor of a company under section 226 of the Companies Act, 1956, and the auditor shall receive such remuneration as the Commission may, in consultation with the Central Government, fix.

1 of 1956.

(3) In conducting the audit, the auditor shall have the same rights and duties as are possessed by an auditor of a company as if the Commission were a company within the meaning of the Companies Act, 1956.

1 of 1956.

Annual
report.

22. The Commission shall prepare once every calendar year, in such form and at such time as may be prescribed, an annual report giving a full account of its activities during the previous year, and copies thereof shall be forwarded to the Central Government and that Government shall cause the same to be laid before both Houses of Parliament.

CHAPTER IV

MISCELLANEOUS

Obligation
as to
secrecy.

23. The Chairman and members and every officer or other employee of the Commission, and every member of any committee constituted under sub-section (1) of section 7, shall maintain strictest secrecy regarding the affairs of the Commission and shall not divulge, directly or indirectly, any information of a confidential nature to a member of the public unless compelled to do so by any judicial or other authority or unless instructed to do so by a superior officer in the discharge of his duties.

Chair-
man,
mem-
bers,
etc., to
be public
servants.

24. The Chairman and members of the Commission and every officer or other employee of the Commission, and every member of any committee constituted under sub-section (1) of section 7 shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

Certain
defects
not to
invalidate
acts or
pro-
ceed-
ings

25. (1) All acts done by the Chairman and members and the members of any committee constituted under sub-section (1) of section 7, acting in good faith, shall, notwithstanding any defect in their appointment or procedure, be valid.

(2) No act or proceeding of the Commission or of any committee thereof shall be invalid merely on the ground of the existence of any vacancy therein or defect in the constitution of the Commission or the committee, as the case may be.

26. No suit or other legal proceeding shall lie against the Commission, the Central Government or the Chairman or member or Secretary or officer or other employee of the Commission for anything which is in good faith done or intended to be done in pursuance of this Act or any rule made thereunder.

Protection of action taken in good faith.

43 of 1961.

27. Notwithstanding anything contained in the Income-tax Act, 1961, or any other enactment for the time being in force relating to income-tax, surtax or any other tax on income, profits or gains, the Commission shall not be liable to pay any tax or surtax in respect of—

Commission not liable to be taxed.

(a) any income, profits or gains accruing or arising of the Fund of the Commission or any amount received in that Fund; and

(b) any income, profits or gains derived, or any amount received, by the Commission.

28. The Commission may, by general or special order, delegate to the Chairman, any member or officer of the Commission, subject to such conditions and limitations, if any, as may be specified therein, such of its powers and duties under this Act as it may deem fit.

Delegation of powers.

29. In the Industrial Disputes Act, 1947, in section 2, in sub-clause (i) of clause (a), after the words and figures "of the Food Corporations Act, 1964, or", the words and figures "the Banking Service Commission established under section 3 of the Banking Service Commission Act, 1974, or" shall be inserted.

Amendment of Act 14 of 1947.

30. (1) The Commission shall furnish to the Central Government such returns or other information with respect to its properties or activities as the Central Government may, from time to time, require.

Returns and information.

(2) The Commission may, for the purpose of enabling it to discharge its functions under this Act, call upon any public sector bank to give such statements or furnish such particulars as the Commission may deem fit and every such bank shall comply with the same.

31. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the terms and conditions of service of the Chairman and members;

(b) the sitting fee and travelling allowance payable to persons, other than the Chairman and members, for attending any meeting of the committee, under sub-section (2) of section 7;

(c) the terms and conditions of service of the Secretary under sub-section (2) of section 8;

(d) the category of persons for whom any vacancy or percentage of vacancies in a public sector bank may be reserved by the Central Government;

(e) the procedure for determination of the fee to be paid by every public sector bank to the Commission under section 19;

(f) the form in which and the time within which the Commission shall prepare and submit its budget to the Central Government under section 20;

(g) the form in which and the time within which the Commission shall prepare its annual statement of accounts under sub-section (1) of section 21;

(h) the form and manner in which and the date by which the Commission shall prepare an annual report giving a full account of its activities during the previous year and submitting the same to the Central Government under section 22;

(i) any other matter which is to be, or may be, prescribed.

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Power
to make
regula-
tions.

32. (1) The Commission may, with the previous approval of the Central Government, by notification, make regulations, not inconsistent with the provisions of this Act or the rules made thereunder, to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the matters referred to in sub-section (3) of section 8;

(b) the duties and conduct of employees of the Commission, other than the Secretary;

(c) the manner in which, and the category of persons from whom, applications may be called for appearing at examinations or tests held by the Commission;

(d) the manner in which appointments may be made to fill any vacancy without consulting the Commission;

(e) the manner in which, and period for which appointments may be made to fill vacancies in relation to which the Commission is unable to make a recommendation;

(f) the number of times and places at which the Commission shall conduct examinations or tests for recruitment to different posts;

(g) the principles in accordance with which candidates shall be selected for different posts;

(h) the fees payable by candidates intending to appear at examinations or tests conducted by the Commission;

(i) generally for the efficient conduct of the affairs of the Commission.

CHAPTER V

EXTENSION OF THE PROVISIONS OF THE ACT TO OTHER BANKING INSTITUTIONS

33. The Central Government may, if it is satisfied that it is necessary or expedient so to do, by notification, specify that all or such of the provisions of this Act as may be specified in the notification (hereinafter referred to as the "specified provisions" shall also apply to, or in relation to, a banking company and thereupon the specified provisions shall apply to such banking company in the same manner as they apply to a public sector bank and references in the specified provisions to a public sector bank shall be construed as references to the banking company:

Provided that no such notification shall be issued in relation to the appointment to any service or post in a banking company unless a request in that behalf has been received by the Central Government from that banking company.

Power of Central Government to extend the provisions of the Act to other banking institutions.

STATEMENT OF OBJECTS AND REASONS

While reviewing the existing arrangements for the recruitment and manpower planning in the public sector banks, the Banking Commission had recommended the establishment of an independent common recruitment agency for all public sector banks on the lines of the Union Public Service Commission so that objective, rational and impartial selection may be ensured. Government have accepted the said recommendation of the Banking Commission. The Bill seeks to give effect to this recommendation by providing for the establishment of a body corporate, to be called the Banking Service Commission.

2. The proposed Commission will have regional offices and be responsible for the recruitment of persons in the clerical and allied cadres of the public sector banks by conducting examinations on a regional basis. The Commission will also recruit persons in the junior level of officers' cadre. The percentage of vacancies in the junior officers' cadre to be filled in by direct recruitment will not be less than 25. The Bill also seeks to vest the Commission with such other functions of an advisory nature as the Central Government may entrust to it from time to time.

3. The Commission will consist of a Chairman and not more than eight members of whom not less than one-half shall be persons with experience of banking and financial institutions. The expenses of the Commission are proposed to be met from the fees to be paid by the public sector banks on whose behalf the recruitments are to be made by the Commission. The Bill seeks to exempt the Commission from payment of taxes on income, profits and gain and recommendation of the President under articles 117(1) and 274(1) of the Constitution has therefore, been obtained.

4. Notes on clauses explain the various provisions of the Bill.

NEW DELHI;

The 7th November, 1974.

C. SUBRAMANIAM.

PRESIDENT'S RECOMMENDATION UNDER ARTICLES 117 AND 274
OF THE CONSTITUTION OF INDIA

[Copy of letter No. F.1(15)/73-IR, dated the 12th November, 1974 from Shri C. Subramaniam, Minister of Finance to the Secretary-General, Lok Sabha.]

The President having been informed of the subject matter of the proposed Bill to provide for the establishment of a Commission for the selection of personnel for appointment to services and posts in certain banking institutions and for matters connected therewith or incidental thereto, recommends under articles 117(1) and 274(1) of the Constitution of India, the introduction of the Bill in the Lok Sabha.

Notes on clauses

Clause 2 defines a number of terms referred to in the Bill.

Clause 3 provides for the establishment of the Banking Service Commission with effect from a date to be notified by the Central Government in the Official Gazette. The clause also provides that unless otherwise specified by the Central Government, the Central Office of the Commission shall be at New Delhi. This clause also provide for the establishment of regional offices in the States or group of States specified by the Central Government.

Clause 4 provides for the appointment and terms of office of Chairman and members of the Commission. The clause lays down the criteria for the selection of the members, and also provides that as nearly as may be one-half of the members of the Commission shall be persons who have not less than 10 years' experience in commercial or central banking. The clause further provides that the term of office shall be 5 years or until the attainment of the age of 65 years, whichever is earlier.

Clause 5 of the Bill prohibits a person who has held office as Chairman or member of the Commission from holding offices under the Government of India or any State or in the Reserve Bank of India or in any institution wholly or substantially owned by Reserve Bank of India or in any nationalised bank or in State Bank of India or in any banking company or any financial institution. The clause further provides that the Chairman and members shall be ineligible for re-appointment in the Commission, but a member shall be eligible for appointment as the Chairman.

Clause 6 lays down the procedure for removal and suspension of the Chairman and members from office in certain circumstances.

Clause 7 provides for the constitution of one or more committees by the Commission and for delegation of such of the functions and powers of the Commission as may be specified in the rules to such committees.

Clause 8 provides for the appointment of a Secretary of the Commission by the Commission with the previous sanction of the Central Government. It also provides for the appointment of other staff and their terms and conditions of service.

Clause 9 lays down the procedure for authentication of orders and other instruments of the Commission.

Clause 10 lays down that the Commission's duty will be to conduct examinations for appointment in each of the public sector banks in (a) the clerical and allied cadres, (b) the junior officers' cadre, and (c) such other cadres of officers as the Central Government may by notification specify.

Clause 11 provides for the calling of applications and conduct of examinations in such States or group of States as may be necessary.

Clause 12 lays down that it shall be the duty of public sector banks to communicate to the Commission the number of vacancies that are likely to occur in a year. The clause also provides that such vacancies in the junior officers' cadre shall not be less than 25 per cent. of the estimated total number of vacancies in that cadre. The clause further empowers the Government to raise this percentage of 25 to a maximum of 33-1/3. The clause further provides that the number of vacancies in the clerical and allied cadre shall be indicated on the basis of vacancies in a State or group of States.

Clause 13 specifies the cases in regard to which consultation with the Commission shall not be necessary.

Clause 14 lays down that the Commission's duty will be to make recommendations to each of the public sector banks, on the basis of the results of the examinations conducted by it, for appointments to fill vacancies communicated to the Commission by such bank.

Clause 15 provides that notwithstanding anything to the contrary contained in any award, settlement or agreement, or in any judgment, decree or order of any court or tribunal or other authority or in any other law in force for the time being, appointments to all the vacancies communicated to the Commission shall be made by the public sector banks only on the recommendations of the Commission except where consultation with the Commission is not necessary.

Clause 16 empowers the Central Government to entrust to the Commission such other functions of an advisory nature as it may think fit.

Clause 17 provides for the reservation of posts for candidates belonging to Scheduled Castes, Scheduled Tribes and other categories of persons. The clause provides that while giving directions to the bank, the Central Government shall give due regard to the reservation of posts made for Scheduled Castes and Scheduled Tribes and other categories of persons in relation to recruitments to the services of the Government and to the general need in, and special requirements of, the bank concerned.

Clause 18 deals with the Fund of the Commission. Various receipts of the Commission shall be credited to the Fund and payments would be made therefrom.

Clause 19 provides that the Central Government may, by general or special order and subject to any rules that may be made in this regard, direct every public sector bank to pay to the Commission such fee as it may determine. In determining the fee, due regard will be given to time and demand liabilities of the bank.

Clause 20 provides that the Commission shall prepare a budget in respect of the financial year next ensuing in such form and at such time each year as may be prescribed.

Clause 21 provides for the maintenance of proper accounts, records and preparation of annual statement of accounts in the form and manner as may be prescribed and for the audit of the accounts of the Commission.

Clause 22 lays down that the Annual Report of the Commission shall be laid before both the Houses of Parliament.

Clause 23 provides for the obligation of secrecy on the part of Chairman and other members of the Commission.

Clause 24 declares the Chairman, members of the Commission and every officer or employee of the Commission to be a public servant within the meaning of section 21 of the Indian Penal Code.

Clause 25 provides that the acts done by the Chairman, members of the Commission and the members of any of the committees in good faith shall be valid and that defects in the constitution of the Commission or its committees shall not invalidate the actions or proceedings of the Commission or its committees.

Clause 26 provides for the protection to the Commission, the Government, the Chairman, members, Secretary, officers or other employees of the Commission for anything which is done in good faith.

Clause 27 exempts the Commission from the liability to pay taxes on income, profits or gains.

Clause 28 authorises the Commission to delegate its powers to the Chairman, any member or officer of the Commission.

Clause 29 amends the Industrial Disputes Act to make it clear that the appropriate Government in relation to the proposed Banking Service Commission will be the Central Government.

Clause 30 lays down that the returns and other information as required by the Central Government shall be furnished by the Commission. It also provides that the Commission may also call upon the public sector banks to give such information as the Commission may deem fit to enable it to discharge its duties.

Clause 31 empowers the Central Government to make rules to give effect to the provisions of the Act.

Clause 32 empowers the Commission to make regulations with the previous sanction of the Central Government to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of the Act.

Clause 33 empowers the Central Government to extend the provisions of the Act to other banking institutions but no such extension will be made except on the request of the banking institution concerned.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 31 of the Bill empowers the Central Government to make rules for matters relating to the terms and conditions of service of the Chairman and other members, the sitting fee and travelling allowance payable to persons other than the Chairman and members for attending any meeting of the committees of the Commission, the terms and conditions of service of the Secretary, the category of persons for whom any vacancy or percentage of vacancies in a public sector bank may be reserved by the Central Government, the procedure for determination of the fees to be paid by every public sector bank to the Commission, preparation and submission of the Budget of the Commission, its Annual Statement of Accounts and Annual Report and any other matter which is to be, or may be, prescribed.

2. *Clause 32* of the Bill empowers the Commission to make, with the previous approval of the Central Government, regulations to provide for methods of appointment, conditions of service and scales of pay of the employees of the Commission other than the Secretary and duties and conduct of such employees, the manner in which the category of persons from which applications may be called, the manner in which temporary appointments may be made and unfilled vacancies may be filled, the number of times and places at which the Commission shall conduct examinations, the principles according to which candidates shall be selected, the fees payable by candidates and generally for the efficient conduct of the affairs of the Commission.

3. Matters in respect of which power is conferred on the Central Government to make rules or on the Commission to make regulations relate to matters of detail and it is hardly possible to provide for them in the Bill itself. The delegation of the legislative power is, therefore, of a normal character.

BILL No. 106 OF 1974

A Bill to provide for preventive detention in certain cases for the purposes of conservation and augmentation of foreign exchange and prevention of smuggling activities and for matters connected therewith.

WHEREAS violations of foreign exchange regulations and smuggling activities are having an increasingly deleterious effect on the national economy and thereby a serious adverse effect on the security of the State;

AND WHEREAS having regard to the persons by whom and the manner in which such activities or violations are organised and carried on, and having regard to the fact that in certain areas which are highly vulnerable to smuggling, smuggling activities of a considerable magnitude are clandestinely organised and carried on, it is necessary for the effective prevention of such activities and violations to provide for detention of persons concerned in any manner therewith;

BE it enacted by Parliament in the Twenty-fifth Year of the Republic of India as follows:—

1. (1) This Act may be called the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

(2) It extends to the whole of India.

(3) It shall come into force on such date (being a date not later than the twentieth day of December, 1974), as the Central Government may, by notification in the Official Gazette, appoint.

Short
title.
extent
and com-
mence-
ment.

**Defini-
tions.**

2. In this Act, unless the context otherwise requires,—

(a) "appropriate Government" means, as respects a detention order made by the Central Government or by an officer of the Central Government or a person detained under such order, the Central Government, and as respects a detention order made by a State Government or by an officer of a State Government or a person detained under such order, the State Government;

(b) "detention order" means an order made under section 3;

(c) "foreigner" has the same meaning as in the Foreigners Act, 1946; 31 of 1946.

(d) "Indian customs waters" has the same meaning as in clause (28) of section 2 of the Customs Act, 1962; 52 of 1962.

(e) "smuggling" has the same meaning as in clause (39) of section 2 of the Customs Act, 1962, and all its grammatical variations and cognate expressions shall be construed accordingly; 52 of 1962.

(f) "State Government", in relation to a Union territory, means the administrator thereof;

(g) any reference in this Act to a law which is not in force in the State of Jammu and Kashmir shall, in relation to that State, be construed as a reference to the corresponding law, if any, in force in that State.

**Power to
make
orders
detaining
certain
persons.**

3. (1) The Central Government or the State Government or any officer of the Central Government, not below the rank of a Joint Secretary to that Government, specially empowered for the purposes of this section by that Government, or any officer of a State Government, not below the rank of a Secretary to that Government, specially empowered for the purposes of this section by that Government, may, if satisfied, with respect to any person (including a foreigner), that, with a view to preventing him from acting in any manner prejudicial to the conservation or augmentation of foreign exchange or with a view to preventing him from—

(i) smuggling goods, or

(ii) abetting the smuggling of goods, or

(iii) engaging in transporting or concealing or keeping smuggled goods, or

(iv) dealing in smuggled goods otherwise than by engaging in transport or concealing or keeping smuggled goods, or

(v) harbouring persons engaged in smuggling goods or in abetting the smuggling of goods,

it is necessary so to do, make an order directing that such person be detained.

(2) When any order of detention is made by a State Government or by an officer empowered by a State Government, the State Government shall, within ten days, forward to the Central Government a report in respect of the order.

**Execution
of deten-
tion
orders.**

4. A detention order may be executed at any place in India in the manner provided for the execution of warrants of arrest under the Code of Criminal Procedure, 1973.

5. Every person in respect of whom a detention order has been made shall be liable—

Power to regulate place and conditions of detention.

(a) to be detained in such place and under such conditions including conditions as to maintenance, interviews or communication with others, discipline and punishment for breaches of discipline, as the appropriate Government may, by general or special order, specify; and

(b) to be removed from one place of detention to another place of detention, whether within the same State or in another State by order of the appropriate Government:

Provided that no order shall be made by a State Government under clause (b) for the removal of a person from one State to another State except with the consent of the Government of that other State.

6. No detention order shall be invalid or inoperative merely by reason—

Detention orders not to be invalid or inoperative on certain grounds.

(a) that the person to be detained thereunder is outside the limits of the territorial jurisdiction of the Government or the officer making the order of detention, or

(b) that the place of detention of such person is outside the said limits.

7. (1) If the appropriate Government has reason to believe that a person in respect of whom a detention order has been made has absconded or is concealing himself so that the order cannot be executed, that Government may—

Powers in relation to absconding persons.

(a) make a report in writing of the fact to a Metropolitan Magistrate or a magistrate of the first class having jurisdiction in the place where the said person ordinarily resides; and thereupon the provisions of sections 82, 83, 84 and 85 of the Code of Criminal Procedure, 1973, shall apply in respect of the said person and his property as if the order directing that he be detained were a warrant issued by the Magistrate;

(b) by order notified in the Official Gazette direct the said person to appear before such officer, at such place and within such period as may be specified in the order; and if the said person fails to comply with such direction, he shall, unless he proves that it was not possible for him to comply therewith and that he had, within the period specified in the order, informed the officer mentioned in the order of the reason which rendered compliance therewith impossible and of his whereabouts, be punishable with imprisonment for a term which may extend to one year or with fine or with both.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence under clause (b) of sub-section (1) shall be cognisable. 2 of 1974.

Advisory
Boards.

8. For the purposes of sub-clause (a) of clause (4), and sub-clause (c) of clause (7), article 22 of the Constitution,—

(a) the Central Government and each State Government shall, whenever necessary, constitute one or more Advisory Boards each of which shall consist of Chairman and two other persons possessing the qualifications specified in sub-clause (a) of clause (4) of article 22 of the Constitution;

(b) save as otherwise provided in section 9, the appropriate Government shall, within five weeks from the date of detention of a person under a detention order make a reference in respect thereof to the Advisory Board constituted under clause (a) to enable the Advisory Board to make the report under sub-clause (a) of clause (4) of article 22 of the Constitution;

(c) the Advisory Board to which a reference is made under clause (b) shall after considering the reference and the materials placed before it and after calling for such further information as it may deem necessary from the appropriate Government or from any person called for the purpose through the appropriate Government or from the person concerned, and if, in any particular case it considers it essential so to do or if the person concerned desires to be heard in person, after hearing him in person, prepare its report specifying in a separate paragraph thereof its opinion as to whether or not there is sufficient cause for the detention of the person concerned and submit the same within eleven weeks from the date of detention of the person concerned;

(d) when there is a difference of opinion among the members forming the Advisory Board, the opinion of the majority of such members shall be deemed to be the opinion of the Board;

(e) a person against whom an order of detention has been made under this Act shall not be entitled to appear by any legal practitioner in any matter connected with the reference to the Advisory Board, and the proceedings of the Advisory Board and its report, excepting that part of the report in which the opinion of the Advisory Board is specified, shall be confidential;

(f) in every case where the Advisory Board has reported that there is in its opinion sufficient cause for the detention of a person, the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit and in every case where the Advisory Board has reported that there is in its opinion no sufficient cause for the detention of the person concerned, the appropriate Government shall revoke the detention order and cause the person to be released forthwith.

9. (1) Notwithstanding anything contained in this Act, any person (including a foreigner) in respect of whom an order of detention is made under this Act at any time before the 31st day of December, 1975 may be detained without obtaining, in accordance with the provisions of sub-clause (a) of clause (4) of article 22 of the Constitution, the opinion of an Advisory Board for a period longer than three months but not exceeding one year from the date of his detention, where the order of detention has been made against such person with a view to preventing him from smuggling goods or abetting the smuggling of goods or engaging in transporting or concealing or keeping smuggled goods and the Central Government or any officer of the Central Government, not below the rank of an Additional Secretary to that Government, specially empowered for the purposes of this section by that Government, is satisfied that such person—

Cases in which and circumstances under which persons may be detained for longer than three months without obtaining opinion of Advisory Board.

(i) smuggles or is likely to smuggle goods into, out of or through any area highly vulnerable to smuggling; or

(ii) abets or is likely to abet the smuggling of goods into, out of or through any area highly vulnerable to smuggling; or

(iii) engages or is likely to engage in transporting or concealing or keeping smuggled goods in any area highly vulnerable to smuggling,

and makes a declaration to that effect within five weeks of the detention of such person.

Explanation.—In this sub-section, “area highly vulnerable to smuggling” means—

(i) the Indian customs waters;

(ii) the inland area fifty kilometres in width from the coast of India falling within the territories of the State of Gujarat, Karnataka, Kerala, Maharashtra, Tamil Nadu and the Union territories of Goa, Daman and Diu and Pondicherry; and

(iii) such further or other inland area not exceeding one hundred kilometres in width from any coast or other border of India, as the Central Government may, having regard to the vulnerability of that area to smuggling, by notification in the Official Gazette, specify in this behalf.

(2) In the case of any person detained under a detention order to which the provisions of sub-section (1) apply, section 8 shall have effect subject to the following modifications, namely:—

(i) in clause (b), for the words “shall, within five weeks”, the words “may, at any time prior to but in no case later than three months before the expiration of one year” shall be substituted;

(ii) in clause (c), for the words “from the date of detention of the person concerned”, the words “from the date on which the reference is made to it” shall be substituted.

10. The maximum period for which any person may be detained in pursuance of any detention order to which the provisions of section 9 do not apply and which has been confirmed under clause (f) of section 8 shall be one year from the date of detention and the maximum period

Maximum period of detention.

for which any person may be detained in pursuance of any detention order to which the provisions of section 9 apply and which has been confirmed under clause (f) of section 8 read with sub-section (2) of section 9 shall be two years from the date of detention:

Provided that nothing contained in this section shall affect the power of the appropriate Government in either case to revoke or modify the detention order at any earlier time.

Revoca-
tion of
detention
orders.

11. (1) Without prejudice to the provisions of section 21 of the General Clauses Act, 1897, a detention order may, at any time, be revoked or modified— 10 of 1897.

(a) notwithstanding that the order has been made by an officer of a State Government, by that State Government or by the Central Government;

(b) notwithstanding that the order has been made by an officer of the Central Government or by a State Government, by the Central Government.

(2) The revocation of a detention order shall not bar the making of another detention order under section 3 against the same person.

Temporary
release
of
persons
detained.

12. (1) The appropriate Government may, at any time, direct that any person detained in pursuance of a detention order may be released for any specified period either without conditions or upon such conditions specified in the direction as that person accepts, and may, at any time, cancel his release.

(2) In directing the release of any person under sub-section (1), the appropriate Government may require him to enter into a bond with or without sureties for the due observance of the conditions specified in the direction.

(3) Any person released under sub-section (1) shall surrender himself at the time and place, and to the authority, specified in the order directing his release or cancelling his release, as the case may be.

(4) If any person fails without sufficient cause to surrender himself in the manner specified in sub-section (3), he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

(5) If any person released under sub-section (1) fails to fulfil any of the conditions imposed upon him under the said sub-section or in the bond entered into by him, the bond shall be declared to be forfeited and any person bound thereby shall be liable to pay the penalty thereof.

Protec-
tion
of action
taken in
good
faith.

13. No suit or other legal proceeding shall lie against the Central Government or a State Government, and no suit, prosecution or other legal proceedings shall lie against any person, for anything in good faith done or intended to be done in pursuance of this Act.

Repeal

14. The Maintenance of Internal Security (Amendment) Ordinance, 1974, shall, on the commencement of this Act, stand repealed.

STATEMENT OF OBJECTS AND REASONS

The various measures, both administrative and legal, taken by Government from time to time to prevent smuggling of goods into or out of India and to check diversion of foreign exchange from official channels have been under constant review. Unless the links which facilitate violations of foreign exchange regulations and smuggling activities are disrupted by immobilising by detention the persons engaged in these operations, anti-smuggling measures would not have a substantial impact. Hence the President promulgated on the 17th September, 1974 the Maintenance of Internal Security (Amendment) Ordinance, 1974. In the light of experience gained and keeping in view the distinct class of persons to be covered, this Bill seeks to replace the said Ordinance by a new and self-contained Act.

NEW DELHI;

The 21st November, 1974.

C. SUBRAMANIAM.

FINANCIAL MEMORANDUM

The enforcement of the new Act will require deployment of additional manpower involving an expenditure of the order of Rs. 22 lakhs per annum and a non-recurring expenditure of about Rs. 75,000.

2. Under clause 8(a) of the Bill, the Central Government and the State Governments are required to appoint Advisory Boards. There is no provision in the Bill regarding the payment of any salary, allowances etc., to the Members of the Advisory Boards. The Central Government may, however, have to incur some expenditure in connection with the functioning of the Advisory Boards. It is not possible to make an accurate estimate of the expenditure which may be involved but ordinarily the amount is likely to be about Rs. 5,000 annually. There will be no non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

The Explanation to sub-clause (1) of clause 9 of the Bill seeks to specify the Indian customs waters and certain inland areas as areas highly vulnerable to smuggling. With a view to covering areas which may become highly vulnerable to smuggling in future, the Explanation also seeks to empower the Central Government to specify by notification in the Official Gazette such further or other inland area not exceeding 100 kilometres in width from any coast or other border of India as that Government may, having regard to the vulnerability of that area to smuggling, determine to be an area highly vulnerable to smuggling. As it is not possible to visualise now itself the areas which may become highly vulnerable to smuggling in future and as the guidelines subject to which the power to notify areas under the Explanation may be exercised have been spelt out in the Explanation, the delegation of power is of a normal character.

Memorandum regarding modifications contained in the Conservation of Foreign Exchange and Prevention of Smuggling Activities Bill, 1974 which seeks to repeal and replace the Maintenance of Internal Security (Amendment) Ordinance, 1974.

The Conservation of Foreign Exchange and Prevention of Smuggling Activities Bill, 1974 seeks to repeal the Maintenance of Internal Security (Amendment) Ordinance, 1974 (hereinafter referred to as "the Ordinance") and replace it by a self-contained law providing for preventive detention in certain cases for the purpose of conservation and augmentation of foreign exchange and prevention of smuggling activities and for matters connected therewith. It may not therefore be quite apposite to say that it modifies the provisions contained in the Ordinance. However, in a broad sense as the Bill has the same object as the Ordinance, the differences (leaving aside the differences of a drafting or formal nature) are explained in the following paragraphs.

2. The Bill is so drafted as to be supplementary to the provisions of article 22 of the Constitution relating to preventive detention. Thus under clause 8 of the Bill it has been spelt out that the provisions relating to Advisory Boards, etc. made in that clause are for the purposes of sub-clause (a) of clause (4) and sub-clause (c) of clause (7) of article 22 of the Constitution. Repetition of the provisions of article 22(5) of the Constitution which is self-operative has been avoided in the Bill. The Bill also contains a preamble which seeks to explain the need for the legislation. In other respects, so far as form is concerned, the Bill follows broadly the pattern of the Maintenance of Internal Security Act, 1971, as amended by the Ordinance.

3. The Bill restricts the categories of authorities who may make orders of detention. Whereas under the Maintenance of Internal Security Act, as amended by the Ordinance, the Central Government, the State Governments, District Magistrates, Additional District Magistrates specially empowered by State Governments and Commissioners of Police can make orders of detention, under the Bill only the Central Government, the State Government or any officer of the Central Government, not below the rank of a Joint Secretary to that Government specially empowered by that Government or any officer of a State Government not below the rank of a Secretary to that Government specially empowered by that Government can make orders of detention. The Bill further provides for certain additional categories of cases in which also orders of detention may be made. According to clause 3(1) of the Bill, orders of detention can also be made with respect to any person with a view to preventing him from acting in any manner prejudicial to the augmentation of foreign exchange or with a view to preventing him from engaging in transporting or concealing or keeping smuggled goods or from harbouring persons engaged in smuggling goods or in abetting the smuggling of goods. Again, under the Bill, an additional category of persons who may be detained for a period longer than three months has been specified. This additional category covers detenus in respect of whom the Central Government or an officer of the Central Government not

below the rank of an Additional Secretary specially empowered by that Government is satisfied that such detenus engage or are likely to engage in transporting or concealing or keeping smuggled goods in any area highly vulnerable to smuggling [*vide* clause 9(1)(iii) of the Bill]. Besides, unlike section 14(2) of the Maintenance of Internal Security Act, clause 11(2) of the Bill merely provides that the revocation of a detention order shall not bar the making of another detention order against the same person. It may be added that clause 9(1) of the Bill corresponding to section 16A of the Maintenance of Internal Security Act, as amended by the Ordinance (relating to cases and circumstances in which persons may be detained for a period longer than three months, without obtaining the opinion of an Advisory Board) contains a specific limitation that the provisions thereof can be applied only in respect of a person against whom an order of detention is made at any time before the 31st day of December, 1975.

The other changes are of a consequential nature.

S. L. SHAKDHER,
Secretary-General.

